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No. 89-546

In The

Supreme Court of the United States

October Term, 1989

JACK J. MORRIS,

Petitioner,

vs.

CAROL WACHER AND
THE SCHOOL DISTRICT OF PHILADELPHIA

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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COUNTER STATEMENT OF QUESTION PRESENTED

Whether a motion for reconsideration of a final, appealable order should not be treated as a motion to "alter or amend a judgment" within the meaning of Fed. R. Civ. P. 59(e).

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COUNTER STATEMENT OF THE CASE

Petitioner did not bring his action under 42 U.S.C. § 1983. His lawsuit was brought directly under the First Amendment to the United States Constitution.

Petitioner's Notice of Appeal to the United States Court of Appeals for the Third Circuit, filed on January 9, 1989, was filed twenty-one days after the District Court's December 19, 1988 denial of petitioner's request for an award of counsel fees and costs.

REASONS FOR DENYING THE WRIT

Petitioner's presentation of the facts and the law and the effect the lower court's decision will have on prevailing parties seeking attorney's fees is delusive. The issue in this case has never been whether or not a prevailing party must bring an original request for attorney's fees within the ten day time period as set forth in Fed. R. Civ. P. 59(e). The issue was and is whether or not Fed. R. Civ. P. 59(e) and Fed. R. App. P. 4(a) (4) should apply to a final, binding, appealable decision on the merits which denied a motion for attorney's fees and costs. None of the cases cited by petitioner address this issue.

There is no reason to treat petitioner's motion for reconsideration of the district court's denial of an award for attorney's fees and costs any differently than a motion for reconsideration of a decision on the merits in any other type of action. Once a court decides the request for attorney's fees, this decision becomes a final appellable order. Any motion for reconsideration or appeal must comply with the appropriate federal rules. To hold otherwise would defeat the purpose of Rule 59(e) which was "to make clear that the district court possesses the power to rectify its own mistakes in the period following the entry of judgment." *White v. New Hampshire Dept. of Empl. Security*, 455 U.S. 445, 450 (1982).[1]

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[1] The filing of the Motion for Reconsideration has the force and effect of filing a motion to alter or amend under Fed. R. Civ. P. 59(e). *Lovelace v. Acme Markets, Inc.*, 820 F.2d 81 (3d

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CONCLUSION

For the foregoing reasons, respondent requests this Honorable Court to deny this Petition for Writ of Certiorari.

Respectfully submitted,

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Cir. 1987). Petitioner's appeal of the lower court's December 19, 1988 Order was improper since he could not file an appeal until the Motion for Reconsideration was granted or denied. Any appeal filed prior to January 11, 1989 "shall have no effect" and Petitioner must file a new appeal. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).